

## PTAB Judges Dish On Argument Strategy In New Atty Training

By Britain Eakin

*Law360 (June 25, 2020, 8:06 PM EDT)* -- Patent Trial and Appeal Board judges gave next-generation patent attorneys advice Thursday on how to navigate oral arguments: Listen carefully to their inquiries, be honest if you don't know something and be prepared to address weaknesses in the case.

Administrative Patent Judge Christa Zado advised junior attorneys to really listen to the questions judges ask, which signal the issues they care most about, and to view oral arguments as an opportunity to persuade the panel of the strength of an attorney's arguments and positions.

Her input came during an online training focused on oral advocacy skills for the PTAB's new Legal Experience and Advancement Program, or LEAP. The program launched on May 18 and is designed to give newer attorneys arguing experience that can otherwise be difficult to come by.

When answering a judge's question, Zado said the key is to slow down, focus on the merits and take some time to answer, even though the clock is ticking.

"I can't emphasize enough how valuable it is for you to provide a thoughtful answer to the questions we have and how helpful it is to the judge, because they most likely asked the question because it's important to their decision," Judge Zado said.

She went on to say that no question should go unanswered, because it will harm an attorney's credibility and leave the panel wondering if the answer is damaging to a party's case. If an attorney doesn't know the answer, Judge Zado said, she should be frank about it rather than try to fudge it and do her best to get the answer during the course of the hearing.

Zado also advised LEAP attorneys to be prepared to address weaknesses in their case, which she said the judges have likely identified and will have questions about.

"If you can be prepared to answer, you're going to be using your time a lot more effectively if you already have the answer to those questions rather than trying to come up with them on the fly," the judge said.

LEAP aims to get clients and senior attorneys more comfortable with letting junior attorneys with fewer than seven years of experience and three or fewer oral arguments under their belts undertake substantive arguments during PTAB hearings.

To incentivize that, the PTAB gives up to 15 minutes of additional argument time when junior attorneys argue, allows senior attorneys to step in if needed and offers free training, like the Thursday session, to help prepare them.

So far, the board has received nine requests for junior attorneys to take on oral arguments at appeals and trials, and Judge Janet Gongola said during the training that the attorneys have done well and the board has been "pleased with the results."

One of those attorneys is Timothy Tang, an associate with Sterne Kessler Goldstein & Fox PLLC. Tang handled a portion of oral arguments Thursday on behalf of Apple in its bid to invalidate an MPH Technologies patent.

Tang, who has been practicing law for four years, told Law360 he appreciated the experience, which was his first-ever oral argument. He said the judges were engaged and attentive and that he was able to answer the panel's questions.

"Overall, I think it went great. I almost felt we were doing this in person with just a few minor differences. I felt like I was presenting an oral argument, truly," he said.

Daniel Block, a director in Sterne Kessler's electronics practice group, handled the rest of Thursday's arguments for Apple and told Law360 that Tang handled himself with poise and did a fantastic job getting his points across clearly. But he also said the panel did a great job.

"The judges treated Tim as if he was any other presenter," Block said. "They didn't hold back, and they didn't ask him easy questions; they asked substantive questions."

Back at the LEAP training, Judge Gongola said that U.S. Patent and Trademark Office Director Andrei Iancu would be participating in an upcoming practicum for LEAP attorneys, which will take place on Aug. 7.

Attorneys will have an opportunity to engage in mock arguments, with the director sitting on several of the mock panels, she said. The judges will also provide feedback to the participants.

A second component of the Aug. 7 training will engage participants in an evaluation of different argument scenarios to demonstrate strategies that work well when presenting certain issues and those that don't work as well, Judge Gongola said.

--Editing by Haylee Pearl.